BILL NO. S-90-08- 27

SPECIAL ORDINANCE NO. S-224-90

AN ORDINANCE approving Contract **FOR RESOLUTION 6169-90, WEST DEWALD (500 & 600 BLOCKS)** between **TOMCO CONSTRUCTION** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract **FOR RESOLUTION 6169-90, WEST DEWALD (500 & 600 BLOCKS)** by and between **TOMCO CONSTRUCTION** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety, is hereby ratified, and affirmed and approved in all respects, respectfully for:

to improve by replacement curbs, sidewalks, drives, alley and drainage on West Dewald Street from Fairfield Avenue to Oakley Street (South Side Only);

involving a total cost of Twenty-One Thousand One Hundred Forty-Six and 75/100 Dollars ($21,146.75).

SECTION 2. Prior Approval has been requested from Common Council on July 24, 1990. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Clifford R Edmonds
Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay
J. Timothy McCaulay, City Attorney

CONTRACT NO. 6169-90
WEST DEWALD STREET (500 & 600 BLOCKS) (COIT)

BOARD ORDER NO. 56-90 WORK ORDER NO. 10,846

THIS CONTRACT made and entered into in triplicate this 22 day of August, 19 90, by and between Tomco Construction Company, herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

> Improvement of West Dewald Street from Fairfield Avenue to Oakley Street (south side only) by replacement of curbs, sidewalks, drives, alley and drainage structures.

all according to Resolution No. 6169-90, City of Fort Wayne Engineering Department drawing entitled "DeWald Street (S. Side) (500 & 600 Block) Curb, Drive & Sidewalk," dated 6-14-90, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of $21,146.75. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety percent (90%) of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety, which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award o any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay, and also requires of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. Advertisement for Bids, for Resolution No. 6169-90.
b. Instructions to Bidders for Resolution No. 6169-90.
c. Contractor's proposal received July 11,1990.
d. Ft. Wayne Street Engineering Drawings accompanying bid packet for Resolution No. 6169-90.
e. Supplemental Specifications accompanying bid packet for Resolution No. 6169-90.
f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
h. Prevailing Wage Scale.
i. Performance and Guaranty Bond.
j. Labor and Material Payment Bond.
k. Right-of-Way Cut Permit.
l. Comprehensive Liability Insurance Coverage.

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insuror acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of the Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract by September 30, 1990.

ARTICLE 13: COUNCILMANIC APPROVAL

This Contract, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14

This contract is governed by the Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

TOMCO CONSTRUCTION COMPANY

BY: _____

Vice, President

BY: _____

_____, Secretary

CITY OF FORT WAYNE, INDIANA

BY: _____

Paul Helmke, Mayor

BOARD OF PUBLIC WORKS & SAFETY

_____

Charles E. Layton
Director of Public Works

_____

Michael McAlexander
Director of Public Safety

_____

Douglas M. Lehman
Director of Administration & Finance

ATTEST:

_____

Patricia J. Crick, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 17th day of Aug., 1990, personally appeared the within named David Newell & Judy Fickering, who, being by me first duly sworn upon their oaths, say that they are the Vice Pres. & Sec. of Tomco Construction Company, and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Tomco Construction Company for the uses and purposes therein set forth.

Carolyn S. Eschmann
NOTARY PUBLIC

CAROLYN S. ESCHMANN
NOTARY PUBLIC STATE OF INDIANA
ALLEN CO.
MY COMMISSION EXPIRES JUNE 21, 1991
ISSUED THRU INDIANA NOTARY ASSOC.

(Type or print name of notary)

MY COMMISSION EXPIRES:_____

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 22nd day of Aug., 19 90, personally appeared the within named Paul Helmke, Mayor of the City of Fort Wayne; Charles E. Layton, Michael McAlexander and Douglas M. Lehman, members of the Board of Public Works and Safety, City of Fort Wayne, Indiana; and Patricia J. Crick, Clerk of the Board of Public Works and Safety, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Carolyn S. Eschmann
NOTARY PUBLIC

CAROLYN S. ESCHMANN
NOTARY PUBLIC STATE OF INDIANA
ALLEN CO.
MY COMMISSION EXPIRES JUNE 21, 1991
ISSUED THRU INDIANA NOTARY ASSOC.

Type or Print Name of Notary

My Commission Expires: _____

Approved by the Common Council of the City of Fort Wayne on the _____ day of _____, 19____.

Special Ordinance No._____.

Continental Insurance℠

Bond No. 116 20 36

PERFORMANCE BOND

Approved by The American Institute of Architects
A.I.A. Document No. A-311 (Feb. 1970 Edition)

KNOW ALL MEN BY THESE PRESENTS:

That TOMCO CONSTRUCTION COMPANY, INC.
(Here insert full name and address or legal title of the Contractor)

as Principal, hereinafter called Contractor, and THE CONTINENTAL INSURANCE COMPANY as Surety,
(Here insert full name and address or legal title of Surety)

hereinafter called Surety, are held and firmly bound unto City of Fort Wayne, Indiana
(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, in the amount of Twenty one thousand, One hundred forty six and 75/100---------- Dollars ($ 21,146.75---------),

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated August 15, 1990
entered into a contract with Owner for Resolution #6169-90
West DeWald Street

in accordance with drawings and specifications prepared by
(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the Contract in accordance with its terms and conditions, or

2)Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this 16th day of August A.D. 1990

Diana L. Herriott
(Witness)

TOMCO CONSTRUCTION COMPANY, INC. (Seal)
(Principal)

BY: Dan M. Lentz V.P.
(Title)

YASTE, ZENT & RYE AGENCY, INC.

Mary A. MacKay
(Witness)

THE CONTINENTAL INSURANCE COMPANY (Seal)
(Surety)

(Title) Attorney-in-Fact

BOND 4393C

Bond No. 116 20 36

LABOR AND MATERIAL PAYMENT BOND

Approved by The American Institute of Architects
A.I.A. Document No. A-311 (Feb. 1970 Edition)

Note: This bond is issued simultaneously with another bond in favor of the owner conditioned for the full and faithful performance of the contract

KNOW ALL MEN BY THESE PRESENTS:

That TOMCO CONSTRUCTION COMPANY, INC.
(Here insert full name and address or legal title of the Contractor)

as Principal, hereinafter called Principal, and THE CONTINENTAL INSURANCE COMPANY as Surety,
(Here insert full name and address or legal title of Surety)

hereinafter called Surety, are held and firmly bound unto City of Fort Wayne, Indiana
(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of Twenty one thousand, One hundred forty six and 75/100-------- Dollars ($ 21,146.75---------),
(Here insert a sum equal to at least one-half of the contract price)

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated August 15, 1990 entered into a contract with Owner for Resolution #6169-90

in accordance with drawings and specifications prepared by

(Here insert full name, title and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed, the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which the legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this 16th day of August A.D. 19 90

TOMCO CONSTRUCTION COMPANY, INC. (Seal)
(Principal)

Diana L Herriott
(Witness)

BY: [signature] V.P.
(Title)

YASTE, ZENT & RYE AGENCY, INC.

THE CONTINENTAL INSURANCE COMPANY (Seal)
(Surety)

Mary A. MacKay
(Witness)

[signature]
(Title)

Attorney-in-Fact

Read the first time in full and on motion by Edmonds, seconded by Talarico, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock _____.M.,E.S.T.

DATED: 8-28-90

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Edmonds, seconded by Bradbury, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	7			2
BRADBURY	✓			
BURNS	✓			
EDMONDS	✓			
GiaQUINTA				✓
HENRY	✓			
LONG	✓			
REDD	✓			
SCHMIDT	✓			
TALARICO				✓

DATED: 9-11-90.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ ~~(GENERAL)~~ (SPECIAL) ~~(ZONING MAP)~~ ORDINANCE ~~RESOLUTION~~ NO. S-224-90 on the 11th day of September, 19 90,

ATTEST: Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL

Charles S. Redd
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of September, 1990 at the hour of 2:00 o'clock P.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 14th day of September, 19 90, at the hour of 5:30 o'clock P.M.,E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

TITLE OF ORDINANCE: Contract for Improvement Resolution #6169-90, West Dewald Street (COIT)

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works and Safety

SYNOPIS OF ORDINANCE: The Contract for Resolution 6169-90, West Dewald Street, is to improve by replacement of curbs, sidewalks, drives, alley and drainage on WEST DEWALD STREET from Fairfield Avenue to Oakley Street (South Side Only)

PRIOR APPROVAL RECEIVED ON 7/24/90

EFFECT OF PASSAGE: Improved curbs, driveways, sidewalks & yard walks at above location

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $21,146.75

ASSIGNED TO COMMITTEE; S-90-08-37.

BILL NO. S-90-08-37

REPORT OF THE COMMITTEE ON PUBLIC WORKS

MARK E. GiaQUINTA, CHAIRMAN
CLETUS R. EDMONDS, VICE CHAIRMAN
HENRY, SCHMIDT, TALARICO

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ approving Contract FOR ESOLUTION 6169-90 WEST DEWALD (500 & 600 BLOCKS) between TOMCO CONSTRUCTION and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) ~~(RESOLUTION)~~

DO PASS	DO NOT PASS	ABSTAIN	NO REC
Cletus Edmonds			
Samuel J. Talarico			
Thomas C. Henry			

DATED: 9-11-90.

Sandra E. Kennedy
City Clerk